

STATE OF MARYLAND

MARYLAND DEPARTMENT OF THE ENVIRONMENT

Shari T. Wilson, Secretary

BILL NO: House Bill 1263

COMMITTEE: Environmental Matters

POSITION: Support with Amendments

TITLE: Mercury Switch Removal from Vehicles

BILL ANALYSIS: This bill requires a motor vehicle manufacturer who sells vehicles in Maryland to develop and submit a mercury minimization plan that includes information on mercury switch removal from motor vehicles to the Department on or before September 30, 2009. The Department would be responsible for approving, disapproving, or conditionally approving the mercury minimization plan within 60 days after receiving it from a manufacturer. The vehicle manufacturer would be required to implement the plan within 30 days after approval of the plan and annually report to the Department.

The legislation also requires, within 30 days after a mercury minimization plan has been approved, that a vehicle recycler or scrap recycling facility remove mercury switches or switch assemblies from end-of-life vehicles before ownership of them is conveyed for recycling and maintain records of mercury switch removal from end-of-life vehicles. The legislation would require a capture rate goal of at least 90 percent of the total number of mercury switches available from end-of-life vehicles.

Manufacturers would be required to pay a minimum of \$3 for each mercury switch or mercury switch assembly removed by a vehicle recycler or scrap recycling facility as partial compensation for labor and other costs incurred by these facilities in the removal of switches or assemblies, and \$1 for each switch or assembly removed by a vehicle recycler or scrap recycling facility as partial compensation for the Department's costs in administering and enforcing the legislation's provisions.

POSITION AND RATIONALE: The Department supports House Bill 1263 with amendments. In January 2007, Maryland entered the voluntary National Vehicle Mercury Switch Recovery Program (NVMSRP). This program was formed as a result of an agreement reached in August 2006, by representatives of EPA, vehicle manufacturers, the American Iron and Steel Institute, the Steel Manufacturers Association, the Institute of Scrap Recycling Industries, the Automotive Recyclers Association, Environmental Defense, the Ecology Center (Ann Arbor), and representatives of the Environmental Council of the States (ECOS). The NVMSRP is designed to remove mercury-containing light switches from scrap vehicles before the vehicles are flattened, shredded, and melted to make new steel and to maximize mercury vehicle switch collection and recycling nationally. The NVMSRP currently pays \$4 per mercury light switch or assembly received (switches do not need to be removed from the assemblies), and \$6 per anti-lock braking system (ABS) module received. The only cost to the vehicle and scrap recyclers is the labor associated with removing the switches. All costs associated with packaging, shipping, and recycling of the switches is borne by the NVMSRP partners. The NVMSRP is the base national program for collection and recycling of mercury vehicle switches and switch assemblies. Every state except Maine has joined the NVMSRP. This program is currently being evaluated to determine its effectiveness and any changes that might be necessary to increase removal of mercury vehicle switches.

As of March 3, 2009, 78 of a possible 152 recyclers and dismantlers in Maryland are participating in the NVMSRP and have collected 6,565 switches resulting in 14.44 pounds of mercury being removed from the environment. This is a 500 percent increase in mercury removed from the environment since March 2008. Many other states participating in the NVMSRP have provided significant resources for contacting and visiting vehicle recyclers and scrap recycling facilities to encourage their participation in the NVMSRP. MDE, utilizing a grant from End-of-Life Vehicle Solutions, the contractor for the NVMSRP, was able to conduct site visits and mailings to the recyclers and dismantlers in Maryland in the Fall 2008 to encourage participation. Until this time, MDE has been unable to dedicate such staff resources to this effort.

The Department is proposing six amendments to House Bill 1263. These amendments would require vehicle manufacturers and Maryland vehicle

recyclers and scrap recycling facilities to participate in the NVMSRP and continue to provide for removal, collection, recovery, and proper management of mercury switches and switch assemblies if the NVMSRP ceases to exist. The amendments will require that vehicle recyclers to remove all mercury switches and switch assemblies from the recycler's inventory existing on October 1, 2009 and, beginning December 1, 2009, within one business day of receipt of an end-of-life vehicle, a vehicle recycler must remove all mercury switches and switch assemblies for recycling from each end-of-life vehicle. The amendments also direct the manufacturer's fee to the State Recycling Trust Fund for the Department to administer and enforce the provisions, add a requirement that the Department report annually to the Department of Legislative Services on the capture rate achieved, and ensure that in the absence of the NVMSRP, that mercury minimization plans are implemented and necessary mechanisms are in place to carry out the provisions of this bill.

FOR MORE INFORMATION,
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BY: The Maryland Department of the Environment

AMENDMENTS TO HOUSE BILL 1263

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 9 strike beginning with “requiring” through “days;” in line 11, in line 12 after “;” insert “requiring a vehicle recycler to remove mercury switches from end-of-life vehicle inventory and from end-of-life vehicles processed into their inventory within a certain time;”, in line 18 strike beginning with “requiring” through “circumstances;” in line 22, and in line 18 after “;” insert “requiring certain fees, fines, and penalties to be deposited into the State Recycling Trust Fund;”.

On page 1, in line 26, strike “Section” and insert “Sections”, insert a comma after “6-904”, strike “and” after “6-904”, and insert a comma and “and 9-1707 (f)” after “6-905”.

AMENDMENT NO. 2

On page 3, in line 1 after “ANNUAL” insert “CUMULATIVE”, in line 2 after the second “of” insert “THE PROJECTED”, in line 3 strike “AVAILABLE FROM” and insert “ESTIMATED TO EXIST IN” and after “VEHICLES” insert “AS IDENTIFIED UNDER THE NATIONAL VOLUNTARY MERCURY SWITCH RECOVERY PROGRAM”, in line 6 after “of” insert “RESALE OF ITS PARTS OR”.

On page 4, in line 12 after “A” strike beginning with “FIXED” through “AND” in line 14 and insert “FACILITY THAT PROCESSES AND MANUFACTURES SCRAP MATERIALS INTO SPECIFICATION GRADE COMMODITIES, INCLUDING A FACILITY THAT UTILIZES A SHREDDER OR FRAGMENTIZER TO PROCESS SCRAP MOTOR VEHICLES INTO SHREDDED SCRAP AND A FACILITY THAT PREPARES END-OF-LIFE VEHICLES FOR SHREDDING OR”.

AMENDMENT NO. 3

On page 4, in line 31 after “.” insert “(B) ON OR BEFORE OCTOBER 1, 2009, ECAH VEHICLE MANUFACTURER IN THE STATE SHALL BECOME A PARTICIPANT IN THE NATIONAL VEHICLE MERCURY SWITCH RECOVERY PROGRAM.” On page 5, in line 1 strike “(B)” and insert “(C)”, in line 4 strike “(C)” and insert “(D)”, and on page 6 in line 32 strike “(D)” and insert “(E)”.

On page 5, in lines 26 and 29 strike “AND”, in line 26 after “RECOVERY” insert “, AND PROPER MANAGEMENT OF”, and in line 29 after “RECOVERY” insert “, AND PROPER MANAGEMENT”.

On page 6, in lines 3 and 8 strike “\$3” and insert “\$4”, in lines 4 and 9 strike “OR” and insert “AND \$6 EACH FOR”, and in line 16 after “SUBTITLE” insert “TO THE STATE RECYCLING TRUST FUND”.

On page 6 in line 32 strike beginning with “WITHIN” through “,” on page 7 in line 4.

On page 7 in line 6 strike “APPROVAL” and insert “SUBMITTAL”, and strike lines 7 through 35 in their entirety. On page 8 strike lines 1 through 3 in their entirety, in line 4 strike “(F)” and insert “(2)”, in line 7 strike “APPROVED”, and in line 9 strike “(G)” and insert “(3)”.

AMENDMENT NO. 4

On page 8 in line 14 after “.” insert “(B) ON OR BEFORE OCTOBER 1, 2009, EACH VEHICLE RECYCLER AND SCRAP RECYCLING FACILITY IN THE STATE SHALL BECOME A PARTICIPANT IN THE NATIONAL VEHICLE MERCURY SWITCH RECOVERY PROGRAM.”, in line 15 strike “(B)” and insert “(C)”, in line 17 strike beginning with “WITHIN” through the first comma in line 19, in line 21 after “SHALL” insert “: (I)”, in line 24 strike “.” and insert “; AND (II) BEGINNING DECEMBER 1, 2009, WITHIN ONE BUSINESS DAY OF RECEIPT OF AN END-OF-LIFE VEHICLE, REMOVE ALL MERCURY SWITCHES AND MERCURY SWITCH ASSEMBLIES FOR RECYCLING FROM EACH END-OF-LIFE”.

VEHICLE", in line 25 strike "A" and after "MERCURY" insert "SWITCHES AND", and strike "SWITCH OR"; in line 26 strike "ASSEMBLY" and insert "ASSEMBLIES", after "SHALL" insert "ON OR BEFORE DECEMBER 31, 2017," and after "90%" insert "OF THE MERCURY SWITCHES ESTIMATED TO EXIST IN END-OF-LIFE VEHICLES AS IDENTIFIED BY THE NATIONAL VEHICLE MERCURY SWITCH RECOVERY PROGRAM".

On page 9, in line 1 strike "(C)" and insert "(D)", in line 10 strike "(D)" and insert "(E)", in line 20 strike "(E)" and insert "(F)", in line 26 strike "(F)" and insert "(G)", in line 32 strike "(G)" and insert "(H)", and on page 10 in line 2 strike "(B)" and insert "(C)", in line 17 strike "(H)" and insert "(I)", in line 21 strike "(I)" and insert "(J)".

On page 9 in line 27 after "TRANSPORTED," insert "RECYCLED," and in line 32 beginning with "AFTER" strike through "SUBTITLE" and insert "BEFORE JANUARY 31 EACH YEAR".

On page 10 in line 8 after "NOT" insert "PROJECTED TO BE" and after "ACHIEVED" insert "ON OR BEFORE DECEMBER 31, 2017", in line 10 after the comma insert "AND RECYCLED", and in line 21 strike "SHALL" and insert "MAY".

AMENDMENT NO. 5

On page 10 strike lines 24 through 31, on page 11 lines 1 through 30, and on page 12 lines 1 through 24 in their entirety and insert "(A) A PERSON WHO VIOLATES ANY PROVISION OF §§6-905.4 OR 6-905.5 OF THIS SUBTITLE, OR ANY REGULATION ADOPTED TO IMPLEMENT THE PROVISIONS OF §§6-905.4 OR 6-905.5 IS GUILTY OF A MISDEMEANOR AND ON CONVICTION OF:

- (1) A FIRST OFFENSE, IS SUBJECT TO A FINE NOT TO EXCEED \$25,000 OR IMPRISONMENT NOT EXCEEDING ONE MONTH OR BOTH;
- (2) A SECOND OFFENSE, IS SUBJECT TO A FINE NOT TO EXCEED \$50,000 OR IMPRISONMENT NOT EXCEEDING ONE YEAR OR BOTH; AND

(3) A THIRD OFFENSE, IS SUBJECT TO A FINE NOT EXCEEDING \$100,000 OR IMPRISONMENT NOT EXCEEDING TWO YEARS OR BOTH.

(B) A PERSON WHO VIOLATES ANY PROVISION OF §§6-905.4 OR 6-905.5 OF THIS SUBTITLE, OR ANY RULE OR REGULATION, PERMIT, ORDER, OR PLAN FOR COMPLIANCE ADOPTED OR ISSUED PURSUANT TO §§6-905.4 OR 6-905.5 IS LIABLE FOR A CIVIL PENALTY NOT TO EXCEED \$25,000 TO BE COLLECTED IN A CIVIL ACTION IN THE CIRCUIT COURT FOR ANY COUNTY, EACH DAY A VIOLATION CONTINUES IS A SEPARATE VIOLATION.

(C) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY, AND AFTER AN OPPORTUNITY FOR A HEARING, THE DEPARTMENT MAY IMPOSE A PENALTY FOR VIOLATION OF §§6-905.4 OR 6-905.5 OF THIS SUBTITLE OR ANY RULE, REGULATION, PERMIT, ORDER, OR PLAN FOR COMPLIANCE ADOPTED OR ISSUED PURSUANT TO §§6-905.4 OR 6-905.5. THE PENALTY IMPOSED UNDER THIS SUBSECTION SHALL BE:

(1) UP TO \$10,000 FOR EACH VIOLATION; AND

(2) ASSESSED WITH CONSIDERATION GIVEN TO:

(I) THE WILLFULNESS OF THE VIOLATION AND THE EXTENT TO WHICH THE VIOLATION WAS KNOWN TO THE VIOLATOR BUT UNCORRECTED BY THE VIOLATOR;

(II) THE EXTENT TO WHICH THE VIOLATION RESULTED IN ACTUAL HARM TO HUMAN HEALTH OR THE ENVIRONMENT;

(III) THE NATURE AND DEGREE OF INJURY TO OR INTERFERENCE WITH GENERAL WELFARE AND HEALTH; AND

(IV) THE EXTENT TO WHICH THE CURRENT VIOLATION IS PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION COMMITTED BY THE VIOLATOR.

(D) EACH DAY A VIOLATION CONTINUES CONSTITUTES A SEPARATE OFFENSE UNDER THIS SECTION.

(E) FINES AND PENALTIES COLLECTED UNDER THIS SUBTITLE SHALL BE DEPOSITED IN THE STATE RECYCLING TRUST FUND.

9-1707 (f) (1) There is a State Recycling Trust Fund.

(2) The Fund shall consist of:

- (i) The newsprint recycling incentive fee;
- (ii) The telephone directory recycling incentive fee collected under §9-1709 of this subtitle;
- (iii) The covered electronic device manufacturer registration fee collected under §9-1728 of this subtitle;

(IV) THE FEE FOR EACH MERCURY SWITCH OR MERCURY SWITCH ASSEMBLY REMOVED BY A VEHICLE RECYCLER OR BY A SCRAP RECYCLING FACILITY IN ACCORDANCE WITH §6-905.5 OF THIS ARTICLE THAT THE DEPARTMENT COLLECTS FROM VEHICLE MANUFACTURERS AS PARTIAL COMPENSATION FOR THE DEPARTMENT FOR COSTS INCURRED IN ADMINISTERING AND ENFORCING THE PROVISIONS OF §§6-904 AND 6-905 OF THIS ARTICLE;

~~(iv)~~ **(V) all fines and penalties collected under this subtitle AND UNDER §§6-904 AND 6-905 OF THIS ARTICLE;**

~~(v)~~ **(VI) Money appropriated in the State Budget to the Fund; and**

~~(vi)~~ **(VII) Any other money from any other source accepted for the benefit of the Fund.**

(3) The Secretary shall administer the Fund.

(4) The Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(5) At the end of each fiscal year, any unspent or unencumbered balance in the Fund that exceeds \$2,000,000 shall revert to the General Fund of the State in accordance with §7-302 of the State Finance and Procurement Article.

(6) In accordance with the State budget, the Fund shall be used only:

(i) To provide grants to the counties to be used by the counties to develop and implement local recycling plans;

(ii) To provide grants to counties that have addressed methods for the separate collection and recycling of covered electronic devices in accordance with §9-1703(c)(1) of this subtitle;

(iii) To provide grants to municipalities to be used by the municipalities to implement local covered electronic device recycling programs; and

(iv) To carry out the purposes of the Office of Recycling under this subtitle **AND §§6-904 AND 6-905 OF THIS ARTICLE.**

(7) (i) The Treasurer shall invest the money in the Fund in the same manner as other State money may be invested.

(ii) Any investment earnings of the Fund shall be credited to the General Fund of the State.

AMENDMENT NO. 6

On page 12 strike lines 26 through 35 and on page 13 strike lines 1 through 20 in their entirety, and on page 13 in line 21 strike through “this Act,”.

On page 13 in line 21 after “.” Insert “SECTION 3. AND BE IT FURTHER ENACTED, That: The Department shall report to the Department of Legislative Services annually on the capture rate achieved, the projected capture rate by December 31, 2017, recommendations regarding changes necessary to improve this Act, and when no further action shall be required and this Act shall be abrogated and of no further force and effect.”

SECTION 4. AND BE IT FURTHER ENACTED, That: If, at any time, the voluntary National Vehicle Mercury Switch Recovery Program is discontinued, a vehicle manufacturer, as defined in §6-904 of this subtitle, must, within 30 days of discontinuance of the National Vehicle Mercury Switch Recovery Program, amend the mercury minimization plan required in §6-905.4 through 6-905.5 of this subtitle to address how the vehicle manufacturer will meet all requirements of this law. The absence of the National Vehicle Mercury Switch Recovery Program does not relieve a vehicle manufacturer of any requirement under this subtitle or any regulation adopted thereunder. If no voluntary National Vehicle Mercury Switch Recovery Program exists, the Department of the Environment will insure that mercury minimization plans are implemented and necessary mechanisms are in place to carry out the provisions of this subtitle.”